

## OFFICE OF THE ATTORNEY GENERAL



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ADMINISTRATIVE BUILDING  
64 NORTH UNION STREET  
MONTGOMERY, ALABAMA 36130  
AREA (205) 834-5150

Honorable B. C. Hornady  
Mayor  
City of Monroeville  
P. O. Box 147  
Monroeville, AL 36461

Municipalities - Annexation -  
Municipal Elections - Alcoholic  
Beverages

In order to meet population  
requirements of municipal option  
law, city may use the federal  
decennial census, a special  
federal census or the municipal  
census.

Dear Mayor Hornady:

The opinion request of the City of Monroeville has been  
received in the Office of the Attorney General. Your request  
presents three questions. The first question is:

Since the provisions of Section 28-2A-1, Code of  
Alabama, do not provide for a method of determining  
the necessary population count of 7,000, what methods  
may be used to determine the population count to  
satisfy the provisions of that Section?

As noted, Code of Alabama 1975, § 28-2A-1 provides,  
without reference to any method of computation, that any  
municipality having a population of 7,000 or more may change  
its classification from dry to wet or wet to dry by a municipal  
option election. Throughout other provisions of the Alcoholic  
Beverage Licensing Code reference is found to both the federal  
decennial census and to any federal census.

Each of these is a recognized method of census-taking, although the special federal census is limited in its scope. The special federal census is governed by Code of Alabama 1975, §§ 11-47-92 and 11-47-93. In addition, a municipality may take its own census. Code of Alabama 1975, §§ 11-47-90, 91, 94 and 95.

It is clear that the federal decennial census could be used to meet the population requirement of Code of Alabama 1975, § 28-2A-1. However, it is possible that one or both of the other methods of census could also be utilized.

Code of Alabama 1975, §§ 11-47-92 and 11-47-93 govern the special federal census. Section 11-47-93 provides that such may be used only as follows:

Any census taken under the provisions of section 11-47-92 shall be used only as the basis for any law which provides for the levy or collection of license taxes where such levy or collection of license taxes is based on population and as the basis for any law which provides for the distribution of state-collected or county-collected licenses, excises, revenues or funds where such distribution is administered or distributed on a population basis. Such census shall be used in administering any such laws as soon as such census is certified by the bureau of the census, of the United States department of commerce and proclaimed by the governing body of the city or town providing for the taking of the census; provided, that where a municipality is annexed or otherwise merged with another municipality it shall not be necessary to take a census as provided in this section but the population of the municipality to which such other municipality is annexed or merged shall be the combined total of the population of each such municipality according to the last federal census and such total population shall be the official census of such municipality.

Thus, this census can be used only for revenue purposes.

The municipal census taken under Code of Alabama 1975, §§ 11-47-90, 91, 94 and 95, according to Section 11-47-94 becomes, when filed with the Secretary of State, the "true and correct census for all such cities and towns within the state."

Turning first to the special federal census, we note that such census may be used "only as the basis for any law which provides for the levy or collection of license taxes where such levy or collection is based on population." Levy or collection of license taxes is not directly dealt with in Section 28-2A-1. However, in order to have authority to levy and collect the business privilege license permitted under Code of Alabama 1975, § 11-51-90, a city must first be "wet". For specific limitations on the amounts of municipal privilege licenses relating to alcoholic beverages, see various provisions of the ABC Code. Therefore, it is the opinion of the office that the special federal census may be used to meet the population requirement of Code of Alabama 1975, § 28-2A-1.

It is the further opinion of this office that the municipal census may also be used in order to meet the population threshold of Section 28-2A-1. In summary, the population requirement of Code of Alabama 1975, § 28-2A-1 may be substantiated by the federal decennial census, a special federal census or a municipal census.

Your second question is:

Is there any prohibition under Section 28-2A-1 or the laws of the State of Alabama which would prevent the municipal governing body from taking a special census, performed by the Federal Bureau of Census or by the municipality itself?

We are unaware of any such prohibition. Of course, both of the statutes in question prohibit conducting such a census more than once every five years.

Your last question is stated as follows:

Upon a petition as provided in Section 28-2A-1, Code of Alabama, being filed with the City Clerk for an option election, is it necessary or is it discretionary for the governing body of the municipality to undertake the expense of either a special population count or a special Federal census to determine the population at the time of the election?

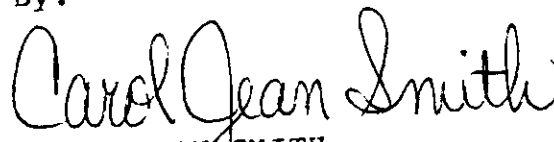
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In view of the fact that the current population of Monroeville, as verified by the 1980 federal decennial census, is less than 7,000 and the fact that both methods of census described above are permissive rather than mandatory, it does not appear to be mandatory that upon presentation of a petition a census be undertaken. However, given the facts stated in your opinion request the taking of a census would certainly be within the discretionary powers of the governing body. Absent the taking of such a census, the petition would be summarily denied.

I do hope that this response sufficiently answers your inquiry. If, however, we may be of further service, please do not hesitate to contact us.

Sincerely yours,

CHARLES A. GRADDICK  
Attorney General  
By:

  
CAROL JEAN SMITH  
Assistant Attorney General

CAG/CJS/pd